

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

RUSSELL TENORIO,

Plaintiff,

v.

**No. Civ. 12-01295 JCH-KBM
Consolidated with
No. Civ. 13-00574 JCH-KBM**

**BRIAN PITZER,
and THE CITY OF ALBUQUERQUE,**

Defendants.

ORDER

This matter comes before the Court on Defendants' Motion to Exclude Witness Tony Valdez as a Trial Witness for Plaintiff's Failure to Disclose Him as a Witness in the Pretrial Order (ECF No. 234). Plaintiff admits that he failed to list Mr. Valdez in the Pretrial Order, which he asserts was an error. Plaintiff, however, identified Mr. Valdez as a witness in his interrogatory answers and Defendants deposed Mr. Valdez on May 9, 2013. *See* Pl.'s Ex. 1, ECF No. 236 at 3-7 of 7. Because Defendants have not shown prejudice from the failure to include Tony Valdez in the Pretrial Order, the Court will not bar his testimony at trial for failure to list him as a witness in the Pretrial Order.

IT IS THEREFORE ORDERED that Defendants' Motion to Exclude Witness Tony Valdez as a Trial Witness for Plaintiff's Failure to Disclose Him as a Witness in the Pretrial Order (ECF No. 234) is **DENIED**.



UNITED STATES DISTRICT JUDGE